

Letter of Findings Number: 06-0336
Sales Tax
For the Year 2003-2005

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ISSUES

I. Sales Tax—Unitary Transaction

Authority: IC § 6-2.5-1-1; [IC 6-2.5-1-2](#); IC § 6-2.5-1-5.

Taxpayer protests the imposition of sales tax on a portion of its sales.

II. Tax Administration—Penalty

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of a negligence penalty.

STATEMENT OF FACTS

Taxpayer operates a tree care company. During the years at issue, Taxpayer provided materials and services to customers. According to Taxpayer, half of Taxpayer's charges constituted materials and half constituted services. When Taxpayer billed the customers, Taxpayer listed the full amount of the charges as one sum, without dividing the charges into separate amounts for materials and services. Taxpayer charged sales tax only on the materials portion of the invoice.

The Indiana Department of Revenue ("Department") audited Taxpayer. The Department determined that Taxpayer's sales constituted unitary transactions and assessed tax on the portion of Taxpayer's sales upon which Taxpayer did not charge sales tax. Taxpayer protested the assessment, the Department conducted a hearing via telephone, and this Letter of Findings results.

I. Sales Tax—Unitary Transaction

DISCUSSION

Taxpayer protests the assessment based on its internal, undisclosed division of charges for materials and services and its collection and remittance of sales tax on only the materials portion of the sale. The issue is whether the Department properly imposed sales tax on the entire transaction price rather than one-half of the transaction price.

While the Department realizes that Taxpayer's charging of sales tax on only one-half of the amount listed on the invoice was simply a misunderstanding regarding the nature of taxable transactions, Taxpayer's argument regarding the assessment still does not demonstrate that the assessment was incorrect. The invoices quoted one price for materials and services and as such were "retail unitary transactions" as defined by IC §§ 6-2.5-1-1 and -2. Under IC § 6-2.5-1-5(a), the total gross receipts from a retail transaction constitute gross retail income subject to sales tax. As such, the total receipts of Taxpayer's transactions, not merely the materials portion, were subject to sales tax.

FINDING

Taxpayer's protest is denied.

II. Tax Administration—Penalty

DISCUSSION

Taxpayer protests the imposition of the ten percent negligence penalty.

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1. The Indiana Administrative Code, [45 IAC 15-11-2](#) further provides:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayer has provided sufficient information to conclude that Taxpayer's failure to pay the proper amount of sales tax was the result of reasonable care and not negligence.

FINDING

Taxpayer's protest is sustained.

Posted: 08/01/2007 by Legislative Services Agency

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